PETITIONER IS NOT A "PARTY IN INTEREST" WITHIN THE MEANING OF PARAGRAPH (20) OF SECTION I OF THE INTERSTATE COMMERCE ACT AND THEREFORE IS NOT ENTITLED TO MAINTAIN A SUIT FOR INJUNCTION TO RESTRAIN RESPONDENT FROM CONSTRUCTING ITS PROPOSED TRACK.

(1) In Order to Entitle a Plaintiff to Maintain an Action Under Paragraph (20) He Must Be Possessed of Some Independent Legal Right of His Own Which Will be Invaded by a Theatened Construction.

Paragraph (20) does not define "party in interest" and therefore a party entitled to maintain an action contemplated by that paragraph must possess those qualifications requisite to enable a party to maintain a suit in equity for an injunction.

Cates v. Allen, 149 U. S. 451, 458, decided that

> "Doubtless new classes of cases may by legislative action be directed to be tried in Chancery, but they must, when tested by the general principles of equity, be of an equitable character, or based on some recognized ground of equity interposition."

If petitioner does not possess the qualifications usually required by the general principles of equity to maintain a suit for injunction, petitioner is not a "party in interest" within the meaning of paragraph (20). It is an established rule that a court of equity concerns itself only with the protection of property rights, and under this rule it treats any civil right of a pecuniary nature as a property right.

International News Service v. Associated Press, 248 U. S. 215, 236;
In re Debs, 158 U. S., 564, 593;
In re Sawyer, 124 U. S. 200, 210.

An injunction is issued for the purpose of preventing existing, impending or presently threatened injury.

Connecticut v. Massachusetts, decided February 24, 1931, Advance Opinions, 75 L. Ed. 297, 304;
Pierce v. Society of Sisters, 268 U. S. 510, 536;
New Jersey v. Sargent, 269 U. S. 328, 331;
Truly v. Wanzer, 5 Howard 141, 142;
Behre v. Anchors Ins. Co., 297 Fed. 986, 989.

Injunction does not issue because of mere fear or apprehension or against something merely feared as liable to occur at some indefinite time in the future.

Connecticut v. Massachusetts, supra;
Behre v. Anchors Ins. Co., supra;
Truly v. Wanzer, supra.

There must be an invasion of a right with existing or presently threatened injury before a party has a standing in a court of equity to maintain a suit for an injunction.

Massachusetts v. Mellon, 262 U. S. 447, 488;
Rindge v. Los Angeles, 262 U. S. 700, 709-710;
Heald v. District of Columbia, 259 U. S. 114, 123;
Arkadelphia Co. v. St. Louis, S. W. Ry. Co., 249 U. S. 134, 149;
Cusack Co. v. City of Chicago, 242 U. S. 526, 530;
Plymouth Coal Co. v. Penn, 232 U. S. 531, 545.

Petitioner must base its right to an injunction upon its own rights and not upon a lack of right in respondent.

Edward Hines Yellow Pine Trustees v. United States, 263 U. S. 143;
Larimer Ry. Co. v. Railway Company, 137 Pa. St. 533.

Petitioner must show an independent existing right in itself and an existing or presently threatened injury to such right in order to maintain a suit in equity for an injunction.

Sprunt & Son v. United States, 281 U. S. 249, 254-257.

In *Larimer Railway Co. v. Railway Co., supra*, one street railway company filed a bill in equity to restrain another street railway company from constructing its railroad. The Court held (p. 547):

"If, then, the appellants have not, in any way, obtained the consent of the city of Pittsburgh to enter upon these streets for the construction of their road what standing have they in a court of equity to test the right of the appellees? The consent of the city is a condition precedent to the exercise of their rights under the charter; without this, they have no right, present or prospective, to construct their railway upon the highways of the city, for *non constat* that this consent will ever be given. It may be that the appellees have no better right; we will decide that question when it arises, but it is plain the appellants have no standing to raise this question for our consideration."

In *Edward Hines Yellow Pine Trustees v. United States, supra,* lumber manufacturers and dealers brought suit against the United States to set aside as void an order of the Interstate Commerce Commission requiring carriers to cease and desist, until the further order of the Commission, from collecting a penalty charge of $10.00 per day on lumber held at reconsignment points. In dismissing the bill this Court held (p. 148):

> "But plaintiffs could not maintain this suit merely by showing (if true) that the Commission was without power to order the penalty charges canceled. They must show also that the order alleged to be void subjects them to legal injury, actual or threatened. This they have wholly failed to do. It is not alleged that the carriers wish to impose such charges and, but for the prohibition contained in the order, would do so. For aught that appears carriers are well satisfied with the order entered. Cancellation of a charge by which plaintiffs' rivals in business have been relieved of the handicap theretofore imposed may conceivably have subjected plaintiffs to such losses as are incident to more effective competition. But plaintiffs have no absolute right to require carriers to impose penalty charges."

If petitioner can be said to have any interest at all, it is vague, speculative and unsubstantial. It is very much like the interests involved in *Edward Hines Yellow Pine Trustees v. United States, supra,* and in *Pittsburgh & West Virginia Ry. v. United States,* 281 U. S. 479.

In the *Hines Case,* in addition to the claim that plaintiffs would be injured as shippers, set up as a

basis for an injunction, it was also claimed that the plaintiffs would be injured as a prospective carrier. Plaintiffs were constructing a local railroad which would soon be ready for operation and it was contended that their cars which would move over this railroad to connecting lines would, in the absence of a deterring penalty charge, be used for temporary storage at reconsigning points. In disposing of this claim, this Court said (p. 148):

> "The further claims of plantiffs are, if possible, even more unsubstantial. They fear that, by reason of the order, they may, in the future, suffer in times of car shortage through the greater use of cars for storage. They fear that the equipment to be used in connection with the railroad which they expect to operate may be diverted, at some time in the future, from transportation uses. If their fears are realized it will be open to them to apply to the Commission for relief."

In the case at bar, petitioner expects to construct and operate a railroad some time in the future. It fears that the construction of respondent's proposed track will injure it in the future, if it does construct and operate a railroad. If petitioner's fears are realized it will be open to petitioner to apply for injunctive relief, provided, of course, respondent's construction and operation of its track is contrary to law.

In the *Pittsburgh & West Virginia Case, supra,* that railroad brought suit to set aside an order of the Interstate Commerce Commission permitting the Wheeling and Lake Erie Railway Company to abandon its station in the City of Cleveland and to use

a union station instead. In endeavoring to show that it had an interest in the matter sufficient to maintain the suit for an injunction, the Pittsburgh contended, among other things, that the Wheeling and Lake Erie and the Pittsburgh had been allocated to one system in the Commission's plan for the consolidation of railroads and that it was seeking to acquire control of the Wheeling. This Court held: "but these vague speculative interests are clearly insufficient to give the Pittsburgh an independent standing in this suit." So lightly did this Court regard these speculative interests of the Pittsburgh that it disposed of them in a foot note.

(2) A Plaintiff Cannot Maintain an Action Under Paragraph (20) to Protect the Public's Interest.

It is argued by Counsel for Petitioner:

> "We believe we do not exaggerate when we say that the 'party in interest' is the most important cog in the machinery provided by Congress in so far as the injunctive remedy is concerned."

It is further argued that as this Court has held that paragraphs (18)-(20) "were designed in the interests of the public to prevent improvident and unnecessary expenditures for the construction and operation of lines not needed to insure adequate service;" that a party situated as is petitioner "is perforce an additional guardian of the public interests in seeing that any construction in violation of law is stopped." "The Interstate Commerce Commission with its manifold nation-wide duties, however efficient and zealous it may be, cannot police the

whole country. And there is no special interest to spur any State Body to action in such cases."

This argument cannot overcome the rules established by the cases cited and is completely answered by the suggestion that if the interest of the public is threatened or a railroad undertakes any construction, operation or abandonment contrary to the provisions of paragraphs (18) and (19) it may be enjoined by a suit instituted by the Interstate Commerce Commission, a commission or regulating body of the [illegible] states affected, or penalties imposed [illegible] United States, and that if [illegible] to learn of such infraction [illegible] be directed thereto [illegible] thereof.

[illegible] Congress to pro- [illegible] injunction to [illegible] has [illegible] It is not [illegible] a private [illegible] merely [illegible]

New York [illegible]
[illegible]

Under [illegible] individual [illegible] only when [illegible] peculiar [illegible]

Coley v. Campbell, [illegible] Misc. 86[illegible] Supp. 679, 681;
Greene v. Holmes, 201 Ind. 123; 166 N. E. [illegible] 283;

Oleand v. Woldenberg, 185 Wisc. 510; 201 N. W. 807, 808;
Woods v. Kiersky (*Tex. Com. App.*) 14 S. W. (2d) 825, 828;
United Fuel Gas Co. v. Railroad Commission, 278 U. S. 300, 310.

Threatened commission of an offense against the laws of the land is insufficient to call into exercise the injunctive powers of the court.

In re Debs, supra, p. 593

Courts of equity have no jurisdiction to enjoin the commission of a crime or the violation of law.

Stoner v. Underseth, 85 Mont. 11; 277 Pac. 437, 443.
Perrin v. Mountain View Mausoleum Association, 206 Cal. 669, 275 Pac. 787.

A private individual has no standing in equity to enjoin an injury threatened to purely public rights.

Joseph v. Weland Davis Co., 297 Ill. 474; 131 N. E. 94.

(3) The Decision of The Circuit Court of Appeals is Not in Conflict or Inconsistent With the Decisions of This Court.

(a) Petitioner contend that the decision [illegible] Court of Appeals is in con- [illegible] *Company v. Gulf,* [illegible] *Company,* 270 U. S. [illegible] *Baltimore & Ohio Rail-* [illegible] *States* (Chicago Junc- [illegible] *Alexander Sprunt &*

Son, Inc. et al. v. United States, 281 U. S. 249, and argue that their contention is sustained by *Edward Hines Yellow Pine Trustees v. United States,* 263 U. S. 143, and *Pennsylvania R. Co. v. United States,* 40 Fed. (2d) 921.

An examination of these cases disproves this contention.

In the *Chicago Junction Case* the carriers instituting the suit were parties to a proceeding before the Interstate Commerce Commission, having intervened as a matter of right expressly granted by the statute. The Court held (pp. 267-68):

> "The plaintiffs may challenge the order because they are parties to it. The Judicial Code, Section 212 * * * declares that any party to a proceeding before the Commission may, as of right, become a party to 'any suit wherein is involved the validity of such order.' The section does not in terms provide that such party may institute a suit to challenge the order. But this is implied. * * * Moreover, the fact of intervention, allowed as it was, implies a finding by the Commission that the plaintiffs have an interest."

In the case cited the Court merely held that where parties by intervention expressly authorized by the statute, become parties to a proceeding they may avail themselves of the right to prosecute an action in the courts to review the Commission's order. The plaintiff in the *Chicago Junction Case* was actually engaged in operating a railroad within the territory involved, and *existing* as distinguished from *prospective* or *potential* rights were involved.

Plaintiffs in the Chicago case were in possession of a right and this right was invaded, to their injury.

They, therefore, possessed the qualifications required by law to make them parties in interest so that they could maintain a suit for an injunction. The cited case differs from the case at bar in that in the latter case petitioner has no existing right and it necessarily follows that there can be no injury to a right not in existence. Even if petitioner ultimately acquires any right as a result of obtaining permission from the Interstate Commerce Commission to construct its proposed railroad and constructs its proposed railroad under such permission, there is no evidence in the record showing that the construction and operation of respondents track will result in any injury whatever to petitioner.

The *Texas & Pacific Case, supra,* is entirely different from the one at bar. In that case the Texas & Pacific was actually serving, under a legal right to do so, the territory involved and it was enjoying a lucrative business therefrom. The Santa Fe was attempting to build an extension of line into the territory served by the Texas & Pacific without securing a certificate of public convenience and necessity, for the purpose of diverting a substantial part of the Texas & Pacific business, necessarily resulting in serious injury to the Texas & Pacific. As against the Santa Fe attempting to serve that territory without compliance with the Act of Congress, but in violation thereof, the Texas & Pacific had a right, under the law, to that business and it was entitled to an injunction against the Santa Fe seeking to invade that right to its injury.

In the case under consideration the Southern Pacific Company is already serving the territory involved. It is seeking to build an industrial spur or

switching track upon a tract of land containing 500 acres immediately adjacent to its main line right of way, which constitutes a part of the territory served by it for many years. Petitioner has no right of way, it has no railroad, and it has no business and it does not appear from the record whether it will ever have either a railroad or a business. There is no showing that the construction of respondent's proposed industrial spur or switching track will injure petitioner even if petitioner ever builds its railroad and secures a business.

The Texas & Pacific had an independent existing right which it was entitled to protect against invasion to its injury; the petitioner in this case has no right to be protected.

In the case of *Sprunt & Son v. U. S., Supra,* it was held that where shippers enjoyed a competitive advantage which entitled them to intervene in an administrative proceeding before the Interstate Commerce Commission, and were thereby entitled under Section 212 of the Judicial Code to intervene in any suit "wherein is involved the validity" of the order entered by the Commission, nevertheless they did not have a sufficient interest to entitle them to maintain an independent suit to vacate and set aside an order of the Commission.

This case supports respondent's contention that when Congress employed the words "party in interest" in connection with an injunction proceeding, it contemplated that one is only a "party in interest" for this purpose, when such party has such an interest as is necessary under established principles of equity jurisprudence to enable the party to maintain an injunction suit. A "party in interest" in administrative proceedings before the Commission

must be one who is entitled to participate in such administrative proceedings. The Sprunt case sustains the principle that a party has no standing to maintain an independent suit for an injunction unless some right of his own has been violated to his injury.

The analysis hereinbefore made of the case of *Edward Hines, etc. v. United States* shows that this case does not support petitioner's contention.

Even though petitioner should subsequently construct a railroad and acquire a business there is no evidence in the record to show that the construction of respondent's proposed track will or may subject petitioner to any injury. Petitioner is seeking an injunction because of its fear or apprehension that in the event it should at any time in the future construct a railroad and attract traffic to its proposed line, the construction of respondent's proposed track may interfere with any rights which it may acquire. It is seeking to enjoin something which may or may not occur in the future. It possesses no rights *in esse* and predicates its case upon mere expectation.

Counsel cite *Pennsylvania Railroad Company v. United States*, 40 Fed. (2d) 921, as authority for the proposition that a carrier has "nothing in the nature of a legal right" as against an existing or possible competitor for the traffic of the territory served by it. The case cited does not sustain this contention. That was a suit to set aside an order of the Interstate Commerce Commission authorizing another railroad carrier to extend its line into territory then exclusively served by the Pennsylvania. The case was decided in accordance with the familiar principle that, as against the United States, one carrier has no such property interest in its territory and business as would permit it to enjoin another carrier from coming into and

serving the same territory under authority from the United States.

The Pennsylvania case has no bearing on the question under consideration.

CONCLUSION.

When paragraph (20) is interpreted in the light of established principles of equity jurisprudence as enunciated in the cases herein cited, its purpose and meaning are clear. Obviously, it was not the intention of Congress to authorize the use of injunction to prevent violations of law or crimes as such. From the standpoint of crimes or violations of law, paragraphs (18) and (19) are to be enforced by fine or imprisonment or both as provided by paragraph (20). Injunction is to be employed to protect the unlawful invasion of existing rights resulting in injury in accordance with established principles of equity jurisprudence.

The rights to be protected are those of the public in interstate commerce on the one hand and of private individuals on the other. The rights of the public are to be protected by the use of an injunction obtained at the suit of "the United States, the Commission, any commission or regulating body of the State or States affected," while the rights of individuals are to be protected at the suit of "any party in interest," that is, of any party who possesses an existing right which may be invaded by unauthorized construction or operation to its injury, either existing or presently threatened. A "party in interest" may resort to a court of equity for the protection of its rights and it need not rely on designated agencies of the government to act for its protection. Like-

wise, the designated agencies of the government may resort to a court of equity to protect public rights and need not wait for a "party in interest" to act for the protection of public rights.

By providing that any "party in interest" may maintain a suit to enjoin unauthorized construction or operation, without further defining "party in interest," Congress has clearly indicated that such "party in interest" must meet all the requirements usually necessary, under established principles of equity jurisprudence, to entitle a party to protection by the extraordinary and drastic remedy of injunction. In other words, a "party in interest" must have an existing independent right which is being invaded to its injury, either actual or presently threatened.

Petitioner, without a right of way, without a railroad, and without a business to protect, and without showing that it will be injured by the construction and operation of respondent's track, if it should ever have a railroad and a business, clearly has no right, under settled rules of equity jurisprudence to maintain its suit for an injunction.

Petitioner is not a "party in interest" within the meaning of that term as used in paragraph (20) and it therefore has no standing in equity to maintain its suit for injunction. The petition should be denied.

Respectfully submitted,

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